

### **Part 3**

#### **Director and School and Institutional Trust Lands Administration**

##### **53C-1-301 Director -- Term -- Compensation -- Removal from office.**

- (1)
  - (a) The board, with the consent of the governor, shall select the director on the basis of outstanding professional qualifications pertinent to the purposes and activities of the trust.
  - (b) If the governor withholds his consent from a candidate agreed upon by the board, he shall give his reasons in writing to the board.
- (2) The director shall serve a term of four years, or until a successor is selected and qualified.
- (3) When a vacancy occurs in the office of the director, the vacancy shall be filled pursuant to Subsection (1) for the remainder of the term.
- (4)
  - (a) The board:
    - (i) shall establish the compensation of the director; and
    - (ii) annually report the director's compensation to the Legislature.
  - (b) The compensation and performance of the director shall be examined each year as part of the board's budget review process.
- (5)
  - (a) The board may remove the director from office for cause by a majority vote of the board.
  - (b)
    - (i) The governor may petition the board for removal of the director for cause.
    - (ii) The board shall hold a hearing on the governor's petition within 60 days after its receipt.
    - (iii) If after the hearing the board finds by a preponderance of the evidence cause for removal, it shall remove the director from office by a majority vote.

Amended by Chapter 337, 1996 General Session

##### **53C-1-302 Management of the administration -- Trust responsibilities.**

- (1)
  - (a) The director has broad authority to:
    - (i) manage the School and Institutional Trust Lands Administration in fulfillment of its purpose;
    - (ii) establish fees, procedures, and rules consistent with general policies prescribed by the board of trustees; and
    - (iii) acquire and dispose of lands and assets in accordance with law.
  - (b) The procedures and rules shall:
    - (i) be consistent with the Utah Enabling Act, the Utah Constitution, and policies of the board;
    - (ii) reflect undivided loyalty to the beneficiaries consistent with the director's fiduciary duties and responsibilities;
    - (iii) subject to Subsection (2), obtain the optimum values from use of trust lands and revenues for the trust beneficiaries, including the return of not less than fair market value for the use, sale, or exchange of school and institutional trust assets; and
    - (iv) be broadly construed to grant the board, director, and administration full discretionary authority to manage, maintain, or dispose of trust assets in the manner they consider most favorable to the beneficiaries.

- (2) The director shall seek to optimize trust land revenues consistent with the balancing of short and long-term interests, so that long-term benefits are not lost in an effort to maximize short-term gains.
- (3) The director shall maintain the integrity of the trust and prevent, through prudent management, the misapplication of its lands and revenues.

Amended by Chapter 247, 2011 General Session

**53C-1-303 Responsibilities of director -- Budget review -- Legal counsel -- Contract for services.**

- (1) In carrying out the policies of the board of trustees and in establishing procedures and rules the director shall:
  - (a) take an oath of office before assuming any duties as the director;
  - (b) adopt procedures and rules necessary for the proper administration of matters entrusted to the director by state law and board policy;
  - (c) submit to the board for its review and concurrence on any rules necessary for the proper management of matters entrusted to the administration;
  - (d) faithfully manage the administration under the policies established by the board;
  - (e) submit to the board for public inspection an annual management budget and financial plan for operations of the administration and, after approval by the board, submit the budget to the governor;
  - (f) direct and control the budget expenditures as finally authorized and appropriated;
  - (g) establish job descriptions and employ, within the limitation of the budget, staff necessary to accomplish the purposes of the office subject to Section 53C-1-201;
  - (h) establish, in accordance with generally accepted principles of fund accounting, a system to identify and account for the assets and vested interests of each beneficiary;
  - (i) notify the primary beneficiary representative's designee regarding the trusts listed in Subsection 53C-1-103(7) on major items that the director knows may be useful to the primary beneficiary representative's designee in protecting beneficiary rights;
  - (j) permit the primary beneficiary representative's designee regarding a trust listed in Subsection 53C-1-103(7) reasonable access to inspect records, documents, and other trust property pertaining to that trust, provided that the primary beneficiary representative's designee shall maintain confidentiality if confidentiality is required of the director;
  - (k) maintain appropriate records of trust activities to enable auditors appointed by appropriate state agencies or the board to conduct periodic audits of trust activities;
  - (l) provide that all leases, contracts, and agreements be submitted to legal counsel for review of compliance with applicable law and fiduciary duties prior to execution and utilize the services of the attorney general as provided in Section 53C-1-305;
  - (m) keep the board, beneficiaries, governor, Legislature, and the public informed about the work of the director and administration by reporting to the board in a public meeting at least once during each calendar quarter; and
  - (n) respond in writing within a reasonable time to a request by the board or the primary beneficiary representative's designee regarding a trust listed in Subsection 53C-1-103(7) for responses to questions on policies and practices affecting the management of the trust.
- (2) The administration shall be the named party in substitution of the Division of State Lands and Forestry or its predecessor agencies, with respect to all documents affecting trust lands from the effective date of this act.
- (3) The director may:

- (a) with the consent of the state risk manager and the board, manage lands or interests in lands held by any other public or private party pursuant to policies established by the board and may make rules to implement these board policies;
  - (b) sue or be sued as the director of school and institutional trust lands;
  - (c) contract with other public agencies for personnel management services;
  - (d) contract with any public or private entity to make improvements to or upon trust lands and to carry out any of the responsibilities of the office, so long as the contract requires strict adherence to trust management principles, applicable law and regulation, and is subject to immediate suspension or termination for cause; and
  - (e) with the approval of the board enter into joint ventures and other business arrangements consistent with the purposes of the trust.
- (4) Any application or bid required for the lease, permitting, or sale of lands in a competitive process or any request for review pursuant to Section 53C-1-304 shall be considered filed or made on the date received by the appropriate administrative office, whether transmitted by United States mail or in any other manner.

Amended by Chapter 224, 2012 General Session

**53C-1-304 Rules to ensure procedural due process -- Board review of director action -- Judicial review.**

- (1) The board shall make rules to ensure procedural due process in the resolution of complaints concerning actions by the board, director, or the administration.
- (2)
- (a) Except as provided in Subsection (2)(b), an aggrieved party to a final action by the director or the administration may petition the board for administrative review of the decision.
  - (b) Final actions by the director or administration to lease, sell, or exchange specific real property or other trust assets are not subject to administrative review.
- (3)
- (a) The board may appoint a qualified hearing examiner for purposes of taking evidence and making recommendations for board action.
  - (b) The board shall consider the recommendations of the examiner in making decisions.
- (4)
- (a) The board shall uphold the decision of the director or the administration unless it finds, by a preponderance of the evidence, that the decision violated applicable law, policy, or rules.
  - (b) The board shall base its final actions on findings and conclusions and shall inform the aggrieved party of its right to judicial review.
- (5) An aggrieved party to a final action by the board may obtain judicial review of that action under Sections 63G-4-402 and 63G-4-403.

Amended by Chapter 247, 2011 General Session

**53C-1-305 Attorney general to represent administration.**

- (1) The attorney general shall:
- (a) represent the board, director, or administration in any legal action relating to trust lands except as otherwise provided in Subsection (3);
  - (b) review leases, contracts, and agreements submitted for review prior to execution; and
  - (c) undertake suits for the collection of royalties, rental, and other damages in the name of the state.

- (2) The attorney general may institute actions against any party to enforce this title or to protect the interests of the trust beneficiaries.
- (3) The administration may, with the consent of the attorney general, employ in house legal counsel to perform the duties of the attorney general under Subsections (1) and (2).
- (4) In those instances where the interests of the trust beneficiaries conflict with those of state officers or executive department agencies for which the attorney general acts as legal advisor under Utah Constitution Article VII, Section 16, the board may, with the consent of the attorney general, employ independent counsel to represent and protect those interests.

Amended by Chapter 237, 2000 General Session

**53C-1-306 Board and administration subject to Public Officers' and Employees' Ethics Act.**

- (1) Board members, the director, employees, and agents of the administration are subject to the requirements of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, and to any additional requirements established by the board.
- (2) A board member, the director, or an employee of the administration may not directly or indirectly acquire any interest in trust lands or receive any direct benefit from any transaction dealing with trust lands, except as provided by law and after providing notice to the board, director, attorney general, and the governor.

Enacted by Chapter 294, 1994 General Session